

# PROPOSED AMENDMENTS TO THE HEARING EXAMINER'S RULES OF PROCEDURE

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21 November 2014

Rule to be amended or new rule:	1.7	Exceptions to and Waiver of Rules and Extension and Reduction of Time
	3.3	Motions

Proposed Effective Date of Amendment: 1 January 2015

The Hearing Examiner solicits comments on the following proposed changes to the Rules of Procedure. The proposed changes may be adopted, modified, or withdrawn based upon the comments received. The proposed rule changes would take effect on January 1, 2015. Contact information for sending comments is located at the foot of this document.

## 1.7 Exceptions to and Waiver of Rules and Extension and Reduction of Time

### Purpose

The purpose of the proposed amendment is to provide a standard for deciding whether to accept untimely notices of appeal and motions. The proposed rule is modelled closely on Rule of Appellate Procedure 18.8 and cases decided under RAP 18.8 would therefore provide a body of decisions for guidance. The rule would only apply if, and to the extent, the Hearing Examiner has jurisdiction. If an ordinance states that timely filing of a notice of appeal is necessary to confer jurisdiction on the Hearing Examiner, then the Hearing Examiner would not have the authority to extend time for filing of the notice of appeal and the rule would not apply.

### Proposed Rule as Amended

**(a) Generally.** The Hearing Examiner may, on her or his own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in section (b).

**(b) Restriction on Extension of Time.** The Hearing Examiner may extend the time within which a party must file a notice of appeal or a motion for reconsideration only in extraordinary circumstances and to prevent a gross miscarriage of justice. The Hearing Examiner will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a party to obtain an extension of time under this section. The Hearing Examiner will not extend time within which a party must file a notice of appeal if the ordinance authorizing the appeal states the Hearing Examiner's jurisdiction depends upon timely filing.

## **Text of Existing Rule with Proposed Amendment**

~~These Rules are designed to address most normal circumstances that arise when dealing with matters before the Hearing Examiner. However, in the event that an unanticipated situation arises which does not lend itself to the full, literal compliance with a Rule, the Examiner reserves the right to exercise discretion to address such circumstances.~~

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**(b) Restriction on Extension of Time.** The Hearing Examiner may extend the time within which a party must file a notice of appeal or a motion for reconsideration only in extraordinary circumstances and to prevent a gross miscarriage of justice. The Hearing Examiner will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a party to obtain an extension of time under this section. The Hearing Examiner will not extend time within which a party must file a notice of appeal if the ordinance authorizing the appeal indicates the Hearing Examiner's jurisdiction depends upon timely filing.

## **3.3 Motions**

### **Purpose**

Rule 3.3 establishes when motions, responses, and replies may be filed. The current rule contains a potential ambiguity regarding when responses and replies should be filed. Motions may be filed any time up until ten days before the scheduled hearing. The current rule provides that responses are due five days prior to the scheduled hearing. If a motion is filed well in advance of the hearing, the response is arguably not due until five days before the hearing. The proposed amendment clarifies that the deadline for response is based upon the filing date of the motion, not the date of the hearing. The last sentence of existing Rule 3.3(c) is cumulative of the proposed amendment to Rule 1.7 and should be deleted to prevent ambiguity.

### **Proposed Rule as Amended**

#### **3.3 Motions**

a) **Pre-Hearing Motions.** A principal party may request summary dismissal, summary judgment, a limitation on the introduction of evidence or testimony, or other matters by motion. Except as otherwise provided in these Rules, pre-hearing motions may be filed in writing by any principal party any time up until the tenth calendar day prior to the hearing. Motions shall be concurrently served on all principal parties by certified mail with a return receipt requested or personal service. The opposing party or parties may file a responsive pleading with the Hearing Examiner within five calendar days of the original motion, which response shall be served on the moving party. The moving party may file a reply no later than two calendar days after a response is

filed. Absent a showing of good cause, any such motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may also be grounds for denial of the motion.

b) Contents. A motion shall provide a concise statement of the factual and legal basis for the motion and may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed ten pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.

c) Response to a Motion. A response shall provide a concise statement setting forth the factual and legal basis as to why the motion should not be granted and may be in the form of a legal brief. Responses shall not exceed ten pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion.

d) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

### **Text of Existing Rule with Proposed Amendment**

#### **3.3 Motions**

a) Pre-Hearing Motions. A principal party may request summary dismissal, summary judgment, a limitation on the introduction of evidence or testimony, or other matters ~~by motion through a timely filed motion.~~ Except as otherwise provided in these Rules, pre-hearing motions may be filed in writing by any principal party any time up until the tenth calendar day prior to the hearing. Motions shall be concurrently served on all principal parties by certified mail with a return receipt requested or personal service. The opposing party or parties may file a responsive pleading with the Hearing Examiner within five calendar days of the original motion, no later than five (5) days prior to the hearing, which response shall be served on the moving party. The moving party may file a reply may be filed no later than 3 two calendar days prior to the hearing after a response is filed. Absent a showing of good cause, any such motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may also be grounds for denial of the motion.

b) Contents. A motion shall provide a concise statement of the factual and legal basis for the motion and may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed ~~ten~~ 40 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.

c) Response to a Motion. A response shall provide a concise statement setting forth the factual and legal basis as to why the motion should not be granted and may be in the form of a legal brief. Responses shall not exceed ten 40 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a

waiver of any objection to the motion. ~~Late responses may be considered at the Examiner's discretion where good cause is shown, if received prior to issuance of a dispositive Order ruling on the motion.~~

d) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

Comments on the proposed rule(s) should be sent to the Clerk of the Hearing Examiner, [Hearing.Examiner@snoco.org](mailto:Hearing.Examiner@snoco.org) or 3000 Rockefeller Ave., M/S 405, Everett, WA 98201, or faxed to 425.388.3201.